92-353

No. _____

Supreme Court, U.S.
FILED
AUG 26 1992
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1992

BILL J. GAMBOCZ,

Petitioner,

vs.

CAROLINE McCALLUM, FORMER MAYOR OF SOUTH BRUNSWICK TOWNSHIP; JOSEPH J. BENEDICT, ESQ., FORMER ATTORNEY FOR TOWNSHIP OF SOUTH BRUNSWICK; SOUTH BRUNSWICK TOWNSHIP, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY; ROBERT J. PACI, DAG OF THE STATE OF NEW JERSEY; JAMES V. HYDE, JR., FORMER DIRECTOR OF RIGHT-OF-WAY FOR THE NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION; AND THE NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

BILL J. GAMBOCZ, Pro se
22 Elizabeth Avenue
Edison, New Jersey 08820
(908) 549-6398

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
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62-510

QUESTIONS PRESENTED

1. Does the Seventh (7th) Amendment to the *"BILL OF RIGHTS"* have any further meaning or force to a right of *"TRIAL BY JURY"*, for the Petitioner in its *"Complaint"* did state that; *"The Plaintiff hereby demands trial by Jury on all issues in this matter, as pleaded or to be pleaded"*, which was denied unto the Petitioner.

2. Amendment V. (5th) states that, *"No person shall be . . .-. deprived of life, liberty or property, without DUE PROCESS of law"*; for in the present issue the Petitioner was deprived of twenty two (22) approved building lots without any statutory or Constitutional authority whatsoever, has the *"DUE PROCESS OF LAW"* been nullified or abandoned?

3. Does the Legislative mandate, that being the Congress of these United States in its enactment of United States Codes, *TITLE 42*, pursuant of *SECTIONS 1983*, 1985 and 1986; along with Title 28, Sections 1331 and 1343 hold any validity at all, or have they been abandoned and have no further force at all?

PARTIES TO THIS PROCEEDING

The caption of this case in this Court contains the names of all parties.

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No. _____

In The

Supreme Court of the United States

October Term, 1992

BILL J. GAMBOCZ,

Petitioner,

vs.

CAROLINE McCALLUM, FORMER MAYOR OF SOUTH BRUNSWICK TOWNSHIP; JOSEPH J. BENEDICT, ESQ., FORMER ATTORNEY FOR TOWNSHIP OF SOUTH BRUNSWICK; SOUTH BRUNSWICK TOWNSHIP, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY; ROBERT J. PACI, DAG OF THE STATE OF NEW JERSEY; JAMES V. HYDE, JR., FORMER DIRECTOR OF RIGHT-OF-WAY FOR THE NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION; AND THE NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

TO: The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States.

PRAYER

The Petitioner, *Bill J. Gambocz,* the Petitioner and Plaintiff in the Court below, respectfully pray that a Writ

of Certiorari issue to review the Opinion of the United States Court of Appeals for the Third Circuit entered in this case.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Third Circuit affirming the Decision of the United States District Court for the District of New Jersey was entered on June 5, 1992 and reproduced hereto as (App. A-6.) along with the District Courts Opinion dated August 13, 1991 reproduced hereto as (App. B-12.)

CONSTITUTION

U.S. Const., Amend V:

"No person shall be . . . deprived of life, liberty or property, without due process of law."

U.S. Const., Amend VII.

"In cases of common law (civil law), when the value of the object under dispute is more than twenty dollars, the parties in the dispute may ask for a jury trial."

STATUTES

28 U.S.C. Sec. 1254 (1):

"Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree."

42 U.S.C. Sec. 1983

"Civil action for deprivation of rights

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

STATEMENT OF RELATED CASES AND PROCEEDINGS

In the case of *Basista v. Weir, et al.*, 340 Fed. Rep.2d 74, (U.S. Ct. of Appeals-Third Circuit) the Court refers to and cites 42 U.S.C.A., Sec. 1983:

The Civil Rights Act, Sec. 1983, provides:

The Court went on to say, and most significantly, since it bears upon the narrow construction accorded the petitioner's suit in the case before this bar:

"The Civil Rights Act is not to be interpreted narrowly," . . . "we said such an action sounds in tort."

Basista v. Weir, at p. 81

"The statutory words 'under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory' do not exclude from the purview of the Civil Rights statutes acts of an official who can show no authority for what he does," citing Monroe v. Pape III, 364 U.S. at 177-187, 81 S. Ct. 473

"The misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is action pursued under color of law within the meaning of 42 U.S.C.A., section 1983", . . . "We are compelled to the conclusion that Congress gave a right of action sounding in tort to every individual whose federal rights were trespassed upon by an officer acting under pretense of State law."

Basista v. Weir, et al. page 81.

JURISDICTION

The Opinion and Judgment of the United States Court of Appeals for the Third Circuit was filed on June 5, 1992. This Petition is filed within 90 days thereafter. The jurisdiction of this Court is invoked under title 28 U.S.C. § 1254(a).

STATEMENT OF THE CASE

The Proceedings Below

On August 13, 1991, Judge John W. Bissell of the United States District Court of New Jersey did *ORDERED* that *"1. The Complaint is hereby dismissed for failure to state a claim pursuant to Fed. R. Civ. P. 12(b) (6) due to the doctrines of collateral estoppel and res judicata; and 2. The permanent injunction entered by Judge Ackerman on May 20, 1981 is hereby enforced in full."*

On March 17, 1992, Judge Walter Stapleton of the United States Third Circuit Court of Appeals did "Order of the District Court dated August 14, 1991, will be summarily *affirmed."*

On April 20, 1992 the Petitioner did file a petition for rehearing before the Court in banc, which was granted on May 13, 1992, subsequently on June 5, 1992 the Petitioner's rehearing by the Court in banc was *denied,* signed by Judge Walter Stapleton.

STATEMENT OF FACTS

On June 10, 1991, the Petitioner did in fact file a Civil Action, that being a *"Complaint and Demand for Trial by Jury"* and docketed as Case 91-2470 and assigned to Judge John W. Bissell. *(App. C-13-21).*

Subsequently ten days after the Petitioner filed its "Complaint", Judge Bissell did in fact issued its "Order to Show Cause", which was brought *"SUA SPONTE", (App. D-22),* compelling the Petitioner to show cause as to why his action should not be dismissed; and then stated that

the defendants briefs and supporting evidence be served upon the plaintiff no later than Monday, July 8, 1991; and that the Defendants be served no later than July 15, 1991.

Judge Bissell in his Order stated in "3. The parties shall appear before this Court at the United States Courthouse in Newark, New Jersey, at 10:00 A.M. on July 22, 1991, Courtroom No. 3 for Oral argument upon this order to show cause."

On July 1st, 1991 the Petitioner did in fact submit to Judge Bissell an affidavit in response to his order to show cause, and in turn the Petitioner did move for summary judgment setting forth under *RULE 12 (b), UNDER RULE 56 (c)* its motion for summary judgment. In its affidavit the Petitioner did in fact submit undisputable evidencial documentations which proved beyond a doubt the *FRAUD PERPETRATED UPON THE COURTS WHICH CULMINATED IN DENIAL OF PETITIONERS "DUE PROCESS" OF LAW.*

ARGUMENT 1 CONTRACT

In Exhibit A, the bogus and illegal agreement entered into by the Respondents on November 16, 1978 for the properties of the Petitioner *(App. E-24)* was a complete sham, for not one (1) provision was ever adhered to and complied with. The Petitioner was *NEVER* privy to the agreement, and the Third Circuit did render its dictum on contracts in the case of *GRAY V. JOSEPH J. BRUNETTI CONSTRUCTION COMPANY* (CA 3 N.J.) 266 F 2d. 809, Cert. den. 361 U.S. 826, for it stated:

"In the leading case of *Kupfersmith v. Delaware Insurance Company,* 1913, 84 N.S. 847 it was said."

> *"THE LAW WILL NOT MAKE A BETTER CONTRACT FOR PARTIES THAN THEY THEMSELVES HAVE SEEN FIT TO ENTER INTO, OR ALTER IT FOR THE BENEFIT OF ONE PARTY AND TO THE DETRIMENT OF THE OTHER. THE JUDICIAL FUNCTION OF A COURT OF LAW IS TO ENFORCE A CONTRACT AS IT IS WRITTEN."*

In Exhibit N, a responsive letter *(App. F-29)* by David H. Engel, Director of Planning and Development did advise the N.J. Dept. of Transportation that:

> *"TO DATE, THE TOWNSHIP HAS NOT RECEIVED ANY NOTIFICATION THAT THE FEDERAL HIGHWAY ADMINISTRATION HAS FORMALLY ADOPTED THE ENVIRONMENTAL IMPACT STATEMENT AND APPROVED THE ROUTE 522 REALIGNMENT."*

2 DUE PROCESS OF LAW

On December 18, 1978, a month after the Defendants-Respondents entered into the bogus and illegal agreement the Petitioner received a letter stating that a "Cease and Desist letter" which was sent to the Mayor and Council of the Township of South Brunswick; *(App. G-30)* and thereafter on January 23, 1979, the N.J. State Department of Transportation did file its *"COMPLAINT"* Docket No. L-24201-78 for the property of a purported realignment and reconstruction of Middlesex County Highway Route #522, A/K/A Ridge Road. *(App. H-31)*

Incredulously, the "Complaint" of the N.J. Department of Transportation in citing its purported authority of 5 (five) Chapters of Public Laws, were as bogus and illegal as the Agreement of November 16, 1978.

In the time frame of November 16, 1978 and January 23, 1979, the Petitioner *was never given any;*

> *"NOTICE OF HEARING AND OPPORTUNITY TO BE HEARD."*

Yet the 14th Amendment, Sec. 1, under "Due Process" and "Reasonableness of Notice"; it has been adjudicated time and again that:

> *"DUE PROCESS REQUIRES NOTICE AND OPPORTUNITY FOR A HEARING BEFORE SEIZURE OF PROPERTY."*
>
> *Meyer v. Curran,* D.C. Pa 1974, 397 F. Supp. 512, also *Collins v. Wolfson,* CA Fla. 1974, 498 F 2d 1100; *Trapper Brown Const. Co. Inc. v. Electromech Inc.* D.C. N.H. 1973, 358 F. Supp. 105.

Even the State of New Jersey has stated:

> *"NOTICE OF INTENTION OF STATE AND MUNICIPALITY TO TAKE PROPERTY FOR PUBLIC USE MUST FIRST BE GIVEN OWNERS SO THAT THEY MAY BE HEARD, WHETHER OR NOT REQUIRED BY STATUTE."*
>
> *Vander Hoven v. City of Rahway,* (1938) 1 A 2d. 303.

3 POWER AND AUTHORITY

I respectfully draw the Courts attention to the dictum of the *United States Circuit Court in the case of Portland Ry.*

Light and Power Co. v. City of Portland, et al., as reported in 181 Federal Reporter, at page 633, it clearly and succinctly stated:

> *"THE **QUESTION** THEREFORE IS ONE OF **POWER** AND **NOT** OF **PROCEDURE.** IF THE CITY (OR PRESENT DEFENDANTS) HAS THE POWER AND AUTHORITY TO LAY A STREET LONGITUDINALLY ALONG AND OVER THE COMPLAINANTS RIGHT OF WAY (OR PROPERTY) AND TO APPROPRIATE IT THEREFORE, TO THE EXCLUSION OF THE COMPLAINANT, THERE IS AN END TO THE CONTROVERSY. IF HOWEVER, **IT HAS NOT SUCH POWER,** ITS PROCEEDINGS IS MANIFESTLY AN ATTEMPT TO DEPRIVE THE COMPLAINANT OF ITS PROPERTY **WITHOUT DUE PROCESS OF LAW,** AND **IT IS ENTITLED TO INVOKE THE AID OF THIS COURT TO PREVENT THE THREATENED** WRONG. – "*
>
> ***"THE FOURTEENTH AMENDMENT IS A GUARANTY TO EVERY CITIZEN, PRIVATE OR CORPORATE, THAT HE OR IT SHALL NOT BE DEPRIVED OF PROPERTY BY A STATE OR ANY OF ITS POLITICAL SUBDIVISIONS WITHOUT DUE PROCESS OF LAW,** AND THE FEDERAL COURTS (ALSO STATE COURTS) HAS JURISDICTION TO ENFORCE THIS GUARANTY. THE TAKING OF PRIVATE PROPERTY BY A MUNICIPALITY (PRESENT DEFENDANTS) **WITHOUT AUTHORITY** IS CLEARLY SUCH A TAKING. **THE COURT THEREFORE HAS A RIGHT AND IT IS ITS DUTY, TO INQUIRE INTO THE CHARTER POWERS OF THE DEFENDANTS . . . "***

Further at page 632 it states:

> "1. *CONSTITUTIONAL LAW (SEC. 280*) – TAKING PROPERTY – DUE PROCESS OF LAW – CONDEMNATION BY CITY. WHERE A MUNICIPAL CORPORATION* ***WITHOUT STATUTORY AUTHORITY*** *WAS ATTEMPTING TO CONDEM COMPLAINANT'S PROPERTY FOR A STREET, IT WAS THEREBY ATTEMPTING TO DEPRIVE COMPLAINANT OF ITS PROPERTY* ***WITHOUT DUE PROCESS OF LAW,*** *IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION."*
>
> *"ED. NOTE – FOR OTHER CASES, SEE CONSTITUTIONAL LAW, DIG. SEC'S. 877-890; DEC. DIG. SEC. 280*."*

The Township of South Brunswick nor the New Jersey State Department of Transportation had any power be it statutory or Constitutional authority for the taking of Petitioner's properties.

Exhibit J. *(App. I-38)* a letter dated June 9, 1981 from the Office of Middlesex County Counsel's office is self evident that neither the Township of South Brunswick nor the State of New Jersey had any authority to condem Petitioner/Plaintiffs properties; the reference to a contract entered into over 20 (twenty) years ago was *NEVER FULFILLED OR EXECUTED.*

4 DISMISSAL DUE TO DOCTRINES OF COLLATERAL ESTOPPEL AND RES JUDICATA

Judge Bissell did in his order directly state that:

"1. The complaint is hereby dismissed for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) due to doctrines of Collateral estoppel and res judicata; and

2. The permanent injunction entered by Judge Ackerman on May 20, 1981 is hereby enforced in full."

There has never been a trial on the merits of the issue before the Courts; as stated by the court in the case of *Peper v. Donnelly*, 8 S.W. 441, 87 Ky., 259, that:

> *"IT IS, HOWEVER, EQUALLY WELL SETTLED THAT A FORMER JUDGMENT, TO BE A BAR, MUST HAVE BEEN A DECISION UPON THE MERITS."*

and

> *"–WERE IT OTHERWISE (NOT SETTLED ON ITS MERITS) ONE WOULD BE DEPRIVED OF HIS "DAY IN COURT" AND "JUSTICE BE DEFEATED" " – "WHERE A PARTY RELIES UPON A FORMER JUDGMENT AS A BAR, THE BURDEN IS UPON HIM TO SHOW THAT THE MERITS OF THE CASE WERE CONSIDERED."*
>
> *VAUGHAN V. O'BRIEN*, 39 HOW. PR. 515.

In respect to Judge Ackerman's order, that being a permanent injunction signed by him on May 20, 1981, prepared by counsel for the Defendants, and the intent as stated by Judge Ackerman was that the Petitioner, was to *"–never to file another suit to block South Brunswick's proposed Route 522 highway project." (App. J-40);* the Petitioner did forward the entire case and opinion of Judge Tenny, U.S.D.J. its dictum in the case of *Laverne v. Corning* cited

at 316 F. Supp. (1970) 629 to 639, for at pg. 633 Judge Tenny stated:

> *"I FIND DEFENDANTS POSITION UNTENABLE. WITHOUT CONSIDERING WHETHER THE PRECISE STANDARDS FOR EITHER RES JUDICATA, STARE DECISIS OR COLLATERAL ESTOPPEL ARE APPLICABLE HEREIN, I MERELY HOLD THAT AS A MATTER OF LAW, BASED UPON THE UNDISPUTED FACTS AS I HAVE FOUND THEM TO BE, DEFENDANTS CONDUCT WAS NOT CONSTITUTIONALLY PERMITTED AT THE TIME THE ENTRIES WERE MADE."*

5 STARE DECISIS

If the lower courts rulings remain in effect, the policy of courts to stand by precedent and not to disturb settled points; would now be obsolete, and has no further meaning or force to any statute, decisions or verdicts as to any *"Civil Rights"* cases; further, that the case recited as *Basista v. Weir, et al.*, Ibid., along with The Civil Rights Act. Sec. 1983 was erroneously rendered; I pray to God it isn't so.

6 TRIAL BY JURY

The United States Constitution in the *"BILL OF RIGHTS"*, Amendment VII preserves the right to a jury trial; it was Thomas Jefferson's letter to Thomas Paine in which he stated:

> *"I CONSIDER TRIAL BY JURY AS THE ONLY ANCHOR EVER YET IMAGINED BY MAN, BY*

WHICH A GOVERNMENT CAN BE HELD TO THE PRINCIPLES OF ITS CONSTITUTIONS."

CONCLUSION

It is respectfully submitted that the Petitioner's Federal rights have been grievously invaded and to this date relief has not been accorded as provided by Federal Statutes, and by the guarantees of the Bill of Rights. Accordingly it is respectfully submitted that the petition for review on Certiorari be granted in the interest of justice.

For the foregoing reasons, the decision of the Court of Appeals should be reversed and the case remanded back to the District Court for a full development by trial by jury of the case at issue, as guaranteed by the 7th Amendment of the United States Constitution.

Respectfully submitted,

/s/ Bill J. Gambocz
BILL J. GAMBOCZ, Pro se
22 Elizabeth Avenue
Edison, New Jersey 08820
(908) 549-6398

Dated: August 24, 1992

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 91-5741

BILL J. GAMBOCZ

vs.

CAROLINE MCCALLUM, ET AL.

CAROLINE MCCALLUM;
JOSEPH J. BENEDICT, ESQ.;
SOUTH BRUNSWICK TOWNSHIP

Counter-Claimants

vs.

BILL J. GAMBOCZ

Counter-Defendant

BILL J. GAMBOCZ

Appellant

(D.N.J. Civ. No. 91-02470)

Present: STAPLETON, GREENBERG AND NYGAARD, *CIRCUIT JUDGES*

Submitted are:

(1) by the Clerk is the within appeal for possible summary action pursuant to Chapter 10.6 of the Internal Operating Procedure;

(2) appellant's response in opposition to listing the appeal for possible summary action;

(3) appellee's response in support of listing the appeal for possible summary action; and

(4) appellant's reply to appellee's response to listing the appeal for possible summary action

in the above-captioned case.

Respectfully,

/s/ Sally Mrvos/EFD
Clerk

SM/EFD/jm

ORDER

The ~~foregoing~~ Order of the district court dated August 14, 1991 will be summarily affirmed.

By the Court,

/s/ Walter K Stapleton
Circuit Judge

Dated: MAR 17 1992

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

SALLY MRVOS
CLERK

TELEPHONE
215-597-2995

May 13, 1992

Mr. Bill J. Gambocz
22 Elizabeth Avenue
Edison, NJ 08820

RE: Gambocz vs. McCallum, et al. No. 91-5741

Dear Mr. Gambocz:

Enclosed herewith is conformed copy of order filed today in the above-entitled case.

The petitioner for Rehearing has been forwarded to the full Court today and you will receive a copy of the order concerning the Petition when it is filed.

Very truly yours,
SALLY MRVOS, CLERK

By: /s/ Carolyn Hicks
Deputy Clerk
Direct Dial - 597-3143

ch

enc.

cc: Richard J. Harcar, Esq.
(James D. Martin, Esq.
(Emil A. Philibosian, Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 91-5741

Re: Bill J. Gambocz, Appellant vs. Caroline McCallum, et al.

Present: STAPLETON, *Circuit Judge*

1. Letter dated 4/17/92 Treated as Motion by Appellant pro se Bill J. Gambocz to extend time to file a petition for rehearing before the Court in banc.

2. For your information the Order summarily affirming the order of the district court was filed 3/17/92.

3. Copy of Appellant's Petition for Rehearing and Supplemental Appendix (one document).

/s/ Carolyn Hicks
Deputy Clerk, Direct Dial – 597-3143

ORDER

The foregoing Motion is granted.

By the Court,

/s/ Walter K Stapleton
Circuit Judge

Dated: MAY 13 1992

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

SALLY MRVOS
CLERK

TELEPHONE
215-597-2995

June 5, 1992

Mr. Bill J. Gambocz
22 Elizabeth Avenue
Edison, NJ 08820

RE: Gambocz vs. McCallum. No. 91-5741

Dear Mr. Gambocz:

Enclosed herewith is conformed copy of order filed today in the above-entitled case denying the Petitioner for Rehearing.

Very truly yours,
SALLY MRVOS, CLERK

By: /s/ Carolyn Hicks
Deputy Clerk
Direct Dial – 597-3143

ch

enc.

cc: Richard J. Harcar, Esq.
James D. Martin, Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 91-5741

BILL J. GAMBOCZ

vs.

CAROLINE McCALLUM, ET AL.

CAROLINE McCALLUM;
JOSEPH J. BENEDICT, ESQ.;
SOUTH BRUNSWICK TOWNSHIP

Counter-Claimants

vs.

BILL J. GAMBOCZ

Counter-Defendant

BILL J. GAMBOCZ

Appellant

(D.N.J. Civ. No. 91-02470)

SUR PETITION FOR REHEARING

BEFORE: SLOVITER, *Chief Judge*, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, and ROTH, *Circuit Judges*

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges

who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ Walter K Stapleton
Circuit Judge

Dated: JUN 5 – 1992

APPENDIX B

NOT FOR PUBLICATION

EXHIBIT G

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BILL J. GAMBOCZ,

Plaintiff,

v.

CAROLINE McCALLUM, Former Mayor of South Brunswick Township;
JOSEPH J. BENEDICT, ESQ., Former Attorney for Township of South Brunswick;
SOUTH BRUNSWICK TOWNSHIP, a Municipal Corporation of the State of New Jersey;
ROBERT J. PACI, DAG of the State of New Jersey;
JAMES V. HYDE, JR., Former director of Right-of-Way, for the New Jersey State Department of Transportation; and NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION,

Defendants.

Civil Action
No. 91-2470

OPINION

APPEARANCES:

BILL J. GAMBOCZ, *pro se*
22 Elizabeth Avenue
Edison, New Jersey 08820

LYNCH, MARTIN, PHILIBOSIAN & CHANSKY
By: Emil H. Philibosian, Esquire
1368 How Lane
P.O. Box 6022
North Brunswick, New Jersey 08902
(Attorneys for Defendants
Caroline McCallum, Joseph J. Benedict, Esquire,
and South Brunswick Township)
ROBERT J. DEL TUFO
Attorney General of New Jersey
By: Dale Laster Lessne
Deputy Attorney General
Hughes Justice Complex
CN 114
Trenton, New Jersey 08625
(Attorney for Defendants
Robert J. Paci, James V. Hyde, Jr. and
the New Jersey Department of Transportation)

BISSELL, *District Judge*

Before the Court is yet another attempt by the plaintiff to litigate purported claims resulting from the right of way on Midlesex County Highway Route #522. On June 20, 1991, this Court issued an Order to Show Cause as to why the case should or should not be dismissed. After receiving briefs and supporting papers from both parties the court rules that the Complaint is hereby dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

The United States Supreme Court recently issued a unanimous opinion on the question of, *inter alia,* the appropriate standards to be applied in a Fed. R. Civ. P. 12(b)(6) motion. *See Neitzke v. Williams,* 490 U.S. 319, (1989). Specifically, Rule 12(b)(6) authorizes a court to

dismiss a claim on the basis of a dispositive issue of law. (*Id.* at 348 (citing *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Conlev v. Gibson*, 355 U.S. 41, 45-46 (1957)). The procedure operates on the assumption that the factual allegations in the complaint (or counterclaim) are true, thereby streamlining litigation by dispensing with needless discovery and factfinding. (*Id.*)

> Nothing in Rule 12(b)(6) confines its sweep to claims of law which are obviously insupportable. On the contrary, if as a matter of law "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," *Hishon*, 467 U.S. at 73, a claim must be dismissed, without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one. What Rule 12(b)(6) does not countenance are dismissals based on a judge's disbelief of a complaint's factual allegations.

Neitzke, 490 U.S. at 327.

In the instant case, plaintiff has failed to provide this Court with any set of facts which could afford a basis for relief in this Court. *Hishon*, 467 U.S. at 73. This claim has already been fully litigated in a number of state court actions. In fact, defendant's motion for summary judgment was granted by the Law Division of the Middlesex County Superior Court because the claims had been fully litigated in prior Superior Court actions and were, therefore, barred by the doctrines of collateral estoppel and *res judicata*. Subsequently, this decision was affirmed by the Appellate Division and plaintiff's petition for certification was denied by the New Jersey Supreme Court. A

copy of the Appellate Division Opinion is annexed hereto and incorporated by reference.

Furthermore, plaintiff petitions this Court in direct defiance of United States District Judge Harold Ackerman's order dated May 20, 1981 which,

> Ordered that Bill J. Gambocz is permanently enjoin(ed) and restrain(ed) from instituting any further civil action in any court in the United States or encouraging, aiding, assisting, abetting or acting in consort with any other person or persons to institute any further action against the parties in this action or their privies based upon any claim or cause of action which was or could have been asserted by the plaintiff in the complaint in this action.

That Order was entered as a result of litigation instituted by Gambocz, in this Court, regarding the same Route 522 matter. Despite this order, the plaintiff has been persistent in his attempts to plunge this Court and all concerned parties into a quagmire brimming with unsubstantiated allegations and bereft of reason. Plaintiff's diatribes border on harassment and are clearly barred by prior dispositions.

/s/ John W. Bissell
JOHN W. BISSELL
United States District Judge

DATED: August 13, 1991

EXHIBIT H

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BILL J. GAMBOCZ, Plaintiff,	:	
v.	:	Civil Action No. 91-2470
CAROLINE McCALLUM, Former Mayor of South Brunswick Township; JOSEPH J. BENEDICT, ESQ., Former Attorney for Township of South Brunswick; SOUTH BRUNSWICK TOWNSHIP, a Municipal Corporation of the State of New Jersey; ROBERT J. PACI, DAG of the State of New Jersey; JAMES V. HYDE, JR., Former director of Right-of-Way, for the New Jersey State Department of Transportation; and NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION, Defendants.	:	**ORDER**

For the reasons set forth in the Court's Opinion filed herewith,

It is on this 13th day of August, 1991, **ORDERED** that:

1. The complaint is hereby dismissed for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) due to the doctrines of collateral estoppel and *res judicata;* and

2. The permanent injunction entered by Judge Ackerman on May 20, 1981 is hereby enforced in full.

/s/ John W. Bissell
JOHN W. BISSELL
United States District Judge

APPENDIX C

BILL J. GAMBOCZ, Plaintiff -vs- CAROLINE McCALLUM, FORMER MAYOR OF SOUTH BRUNSWICK TOWNSHIP, JOSEPH J. BENEDICT, ESQ., FORMER ATTORNEY FOR TOWNSHIP OF SOUTH BRUNSWICK; SOUTH BRUNSWICK TOWNSHIP, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY; ROBERT J. PACI, DAG OF THE STATE OF NEW JERSEY; JAMES V. HYDE, JR., FORMER DIRECTOR OF RIGHT-OF-WAY, FOR THE NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION; AND THE NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION. Defendants	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY CASE NO. 91-2470JWB CIVIL ACTION COMPLAINT AND DEMAND FOR TRIAL BY JURY (Original Filed Jun 10 1991)

The Plaintiff, BILL J. GAMBOCZ, residing at 22 Elizabeth Avenue, Edison, 08820, Middlesex County, New Jersey, complaining of the said Defendants, says:

1. This Court has jurisdiction over the subject matter of this suit, pursuant to the provisions of Section 1983,

1985 and 1986 of Title 42, United States Code, and Sections 1331 and 1343 of Title 28, United States Code, and the Fifth and Fourteenth Amendments of the United States Constitution, in respect to the "Due Process Clause", as guaranteed by the "Bill of Rights".

2. The matter in controversy arises under the Constitution of the United States, and exceeds the sum of Ten Thousand Dollars ($10,000), exclusive of interest and cost of suit.

3. At all times relevant hereto the Plaintiff, BILL J. GAMBOCZ is the principal and sole stockholder of BARTON INVESTMENT ASSOCIATES, a New Jersey State Corporation, is now and has been the benefical owner of Seventy Two (72) Court approved residential building lots in Block 84, located on West New Road, within the limits of the municipality of the Township of South Brunswick.

4. Plaintiff, having exhausted all of his legal remedies in the State Courts, and a "Petition for Certification" to the New Jersey State Supreme Court being denied, and filed on May 30, 1991; as "Witness, the Honorable ROBERT N. WILENTZ, Chief Justice, at Trenton, this 28th day of May 1991."

FIRST COUNT

1. November 16, 1978 on this date, Defendant JOSEPH J. BENEDICT, ESQ., the former attorney for the Defendant TOWNSHIP of SOUTH BRUNSWICK, along with Defendant CAROLINE S. McCALLUM, the former Mayor of the TOWNSHIP OF SOUTH BRUNSWICK, did devise a scheme for the illegal taking of BARTON INVESTMENT ASSOCIATES (hereinafter referred to as BARTON) property.

2. The concocted scheme being that Defendant, JOSEPH J. BENEDICT, ESQ., did prepare an "Agreement" in which he hired the Defendant NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION (hereinafter referred to as STATE DOT), as a co-conspirator for a ten percent (10%) fee for the taking of BARTON'S property.

3. The agreement of November 16, 1978 stated in part as follows:

"WHEREAS, There is a need to improve County Route 522 in South Brunswick Township in the County of Middlesex; and

WHEREAS, the Sponsor has requested State assistance in the acquisition of R.O.W. for the said improvement; and

WHEREAS, the Sponsor has estimated the total cost of such improvement, all of which will be borne by the Sponsor, as $100,000.00;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

FIRST, the Sponsor agrees that, if the herein described project is approved by the Federal Highway Administration, U.S. Department of Transportation, it will accept and comply with all provisions as set forth below:"

"SECOND, the State agrees:

A. The State shall prepare and present submissions to the Federal Highway Administration in order to obtain approvals, authorizations of funds and obligations of Federal Funds for the various phases of the project.

B. After approval of the program by the Federal Highway Administration, the State shall take all necessary actions to advance the project to construction.

C. The State shall appraise, negotiate for and acquire the right of way necessary for the project and shall provide all necessary relocation assistance."

4. All of said Defendants knew that the agreement was fraught with deliberate deceit, and thus perpetrated a horrendous hoax upon the Courts: for they knew that:

A. The Defendant TOWNSHIP OF SOUTH BRUNSWICK was required by Statute to obtain a consenting resolution by the Chosen Board of Freeholders to engage in County related construction of a Highway, which it never did receive.

B. According to the "Agreement" it was necessary to have the approval of the FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, which it never had.

5. December 18, 1978, on this date the Plaintiff was first notified by a letter from the Defendant STATE DOT that,

"– a complaint will be filed and a Declaration of Taking which entitles the DEPARTMENT OF TRANSPORTATION to immediate possession under R.S. 27:7-22 (as amended L. 1966 C 155) will be accomplished concurrently."

Never was the Plaintiff, nor BARTON ever afforded a Notice of Pendency of Taking, nor ever given an opportunity to be heard.

6. On the same date December 18, 1978, the Defendant JAMES V. HYDE JR., did notify Defendant CAROLINE S. McCALLUM by letter in which he stated:

"– notice of acquistion and "cease and desist letter" have this date been mailed to the subject property owner (that being BARTON) certified and special delivery".

Wherefore, the Plaintiff demands judgment against all said Defendants, CAROLINE S. McCALLUM, JOSEPH J. BENEDICT, TOWNSHIP OF SOUTH BRUNSWICK, ROBERT J. PACI, JAMES V. HYDE, JR., and NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION.

A. Jointly and separatly for $6,000,000 compensatory damage of taking twenty (20) building lots illegally.

B. Punitive damage of $4,000,000 for causing Plaintiff a coronary and diabetic condition.

C. For such other relief sought to be equitable just.

COUNT TWO

1. Plaintiff repeats and realleges each and every allegation of the First Count as if set forth herein at length.

2. Defendant ROBERT J. PACI, ESQ., DAG for the Defendant STATE DOT did:

"Approved as to Form" the Agreement of November 16, 1978.

3. January 23, 1979 Defendant ROBERT J. PACI proceeded with post haste and did file a complaint in the Superior Court of New Jersey, that being in the Law Division of Middlesex County, and Docketed as L-24201-78.

4. Defendant ROBERT J. PACI, ESQ., in the furtherance of the concocted scheme did state in his "Civil Action", that being a "Complaint" in which he cited five (5) chapters of Public Laws, they being as its

authority for the taking of BARTONS' property as follows:

A. "Chapter 301 of the laws of 1966, approved December 12, 1966."

B. "Chapter 319 of the laws of 1927, N.J.S.A. 27:1-1 et seq."

C. "Chapter 361 of the laws of 1971 as approved December 21, 1971."

D. "Chapter 83 of the laws of 1945, N.J.S.A. 27:7A-1 et seq."

E. "Chapter 112 laws of 1951, N.J.S.A. 27:7-22.2".

5. The aforestated five (5) Chapter of Public Laws are as false, misleading, fraudulent and deceptive, and therefore a fraud perpetrated on the Court itself.

6. Defendant, STATE DOT was required to adhere to "Federal Requirements relative to Right-of-Way acquistion", in this case not one (1) of the required eight (8) steps were ever complied with.

Wherefore, Plaintiff demands judgment against all said Defendants, CAROLINE S. McCALLUM, JOSEPH J. BENEDICT, TOWNSHIP OF SOUTH BRUNSWICK, ROBERT J. PACI, JAMES V. HYDE, JR., AND NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION.

A. Jointly and separately for $6,000,000 compensatory damage of taking twenty (20) building lots illegally.

B. Punitive damage of $4,000,000 for causing Plaintiff a Coronary and Diabetic condition.

C. For such other relief sought to be equitable just.

COUNT THREE

1. Plaintiff repeats and realleges each and every allegation of the First and Second Counts as if set forth herein at length.

2. February 6, 1979 exactly fourteen days (14) after the filing of the complaint in the Civil action by Defendant ROBERT J. PACI for the illegal taking of BARTONS' property, that being January 23rd, 1979, Defendant JAMES V. HYDE, JR., then the Director of Right-of-Way did file a "Declaration of Taking", under "2", he stated that:

> "The DEPARTMENT OF TRANSPORTATION of the STATE OF NEW JERSEY is entitled to the exclusive possession and use of the premises aforesaid and will forthwith enter into and take of them pursuant to the provisions of Chapter 361 of the laws of 1971, and N.J.S.A. 27:7-22, as amended supplemented."

3. The aforestated allegation in par. 2 of this count, the representation of Defendant, JAMES V. HYDE JR., was a factual misrepresentation as ever conceived.

4. The Defendant TOWNSHIP OF SOUTH BRUNSWICK Tax Book reflects that the Defendant STATE DEPARTMENT OF TRANSPORTATION is presently and still the owner of property confiscated from BARTON, which was paid for by the citizens and tax payers of South Brunswick.

Wherefore, Plaintiff demands judgment against all said Defendants, CAROLINE S. McCALLUM, JOSEPH J. BENEDICT, TOWNSHIP OF SOUTH BRUNSWICK, ROBERT J. PACI, JAMES V. HYDE, JR., and NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION.

a. Jointly and Separately for $6,000,000 Compensatory damage of taking twenty (20) building lots illegally.

b. Punitive damage of $4,000,000 for causing Plaintiff a Coronary and Diabetic condition.

c. For such other relief sought to be equitable just.

/s/ Bill J. Gambocz
BILL J. GAMBOCZ
Plaintiff, Pro Se

Dated: 6/10/91

The Plaintiff hereby requests and demands trial by Jury on all issues in this matter, as pleaded or to be pleaded.

/s/ Bill J. Gambocz
BILL J. GAMBOCZ
Plaintiff, Pro Se

Sworn to and Subscribed before
me this 10TH day of June 1991.

/s/ Laurie K. Ewan
LAURIE K. EWAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 3, 1992

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BILL J. GAMBOCZ, Plaintiff, v. CAROLINE McCALLUM, Former Mayor of South Brunswick Township; JOSEPH J. BENEDICT, ESQ., Former Attorney for Township of South Brunswick; SOUTH BRUNSWICK TOWNSHIP, a Municipal Corporation of the State of New Jersey; ROBERT J. PACI, DAG of the State of New Jersey; JAMES V. HYDE, JR., Former Director of Right-of-Way, for the New Jersey State Department of Transportation; and NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION, Defendants.	Civil Action No. 91-2470 **ORDER TO SHOW CAUSE** **(ORIGINAL FILED** June 21, 1991)

TO: MR. BILL J. GAMBOCZ, *pro se*
22 Elizabeth Avenue
Edison, New Jersey 08820

This matter having been brought *sua sponte* by the Court after receiving a copy of the complaint filed, for an

order to show cause as to why this action should not be dismissed,

It is on this 20th day of June, 1991, **ORDERED** that:

1. The parties show cause before this Court as to why this complaint should or should not be dismissed pursuant to any applicable statute of limitations, pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted, or such other grounds as may be appropriate;

2. The defendants' briefs and supporting papers shall be served on the plaintiff and filed with the Court, by certified and regular mail, no later than Monday, July 8, 1991. Plaintiff's response shall be served on each defendant and filed with the Court by certified and regular mail, no later than Monday, July 15, 1991.

3. The parties shall appear before this Court at the United States Courthouse in Newark, New Jersey, at 10:00 A.M. on July 22, 1991, Courtroom No. 3, for oral argument upon this order to show cause.

/s/ John W. Bissell
JOHN W. BISSELL
United States District Judge

APPENDIX E

NEW JERSEY DEPARTMENT OF TRANSPORTATION

THIS AGREEMENT, made this 16th day of November, 1978, by and between South Brunswick Township, hereinafter called the "Sponsor" and the State of New Jersey acting through its Commissioner of Transportation, hereinafter called the "State", witnesses:

WHEREAS, There is a need to improve County Route 522 in South Brunswick Township in the County of Middlesex; and

WHEREAS, the Sponsor has requested State assistance in the acquisition of R.O.W. for the said improvement; and

WHEREAS, the Sponsor has estimated the total cost of such improvement, all of which will be borne by the Sponsor, as $100,000.00;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

FIRST, the Sponsor agrees that, if the herein described project is approved by the Federal Highway Administration, U.S. Department of Transportation, it will accept and comply with all provisions as set forth below:

A. The Sponsor shall provide the necessary property and right-of-way plans and descriptions of the individual parcels in accordance with State standards for use by the State for acquiring necessary right-of-way.

B. In order to provide the benefits of necessary expertise to expedite the project and qualify same for

Federal Aid construction, the State, on behalf of the Sponsor, shall exclusively accomplish all appraisals, right-of-way acquisitions, and relocations necessary for this project, in the name of the State, to be turned over to the Sponsor upon completion of the project. State Acquisition procedures shall comply with Federal Uniform Eminent Domain and Relocations Assistance Requirements.

C. Sponsor shall pay the STATE all disbursed costs of appraisals, negotiations, condemnations, legal agreements, awards, title searches, closing costs, all reasonable and proper relocation activities services and payments, negotiated agreements and any other costs including the cost of the land itself, and directly attributable to property acquisition as expended to other parties.

D. Prior to the institution of any actions or closings, the Sponsor shall advance to the State the sum of $100,000.00 as total estimated payments that will be required to complete the deposits and closings.

E. Prior to any filing of a Declaration of Taking by the State, Sponsor shall advance the State any sum of money in excess of the amount estimated in "D" above which is necessary to complete the deposit required for the Declaration of Taking plus an additional ten percent (10%) of such sum as an estimate of costs and services under "C" above and "G" below, respectively.

F. Should the awards or court judgments exceed the estimated amount, the Sponsor shall further advance the required balance to the State. Any residual funds remaining after completion of the condemnation actions shall be returned to the Sponsor by the State.

G. Sponsor will pay STATE ten (10%) percent of the Total costs described in Part (B) as reimbursement for all services performed by STATE employees.

H. Additional work not contemplated in the original project but deemed essential to the project by the Sponsor, or additional work arising during construction and authorized by the Sponsor which does not meet with Federal Highway Administration approval for Federal Funds, will be classified as non-participating work. In the event such payment is not made immediately available to the State, the Sponsor hereby authorizes the State to make payment for this additional work from any funds held by the State for distribution to the Sponsor.

I. The Sponsor shall prepare and issue to the State's contractor all permits required by the Sponsor for the project without cost to the State or its contractor.

J. The Sponsor shall ensure that the project is on the appropriate Transportation Improvement Program (T.I.P.) when required.

SECOND, the State agrees:

A. The State shall prepare and present submissions to the Federal Highway Administration in order to obtain approvals, authorizations of funds and obligations of Federal Funds for the various phases of the project.

B. After approval of the program by the Federal Highway Administration, the State shall take all necessary actions to advance the project to construction.

C. The State shall appraise, negotiate for and acquire the right of way necessary for the project and shall provide all necessary relocation assistance. Upon

completion of the project, the right-of-way shall be turned over immediately and relocation assistance procedures shall comply with Federal Uniform Eminent Domain and Relocation Assistance Requirements.

D. Where condemnation is deemed necessary, the State shall prepare the forms of Complaint and related pleadings in proper order and file the appropriate documents with the Courts and accomplish service of process and all other necessary pleadings.

E. Where possession is required in advance of proceedings to fix compensation, the State shall prepare Declarations of Taking and Orders for Payment Into Court together with a check to cover the deposit and send notices of such filing and deposit to all parties in interest.

F. The State shall return any unused funds paid to the State that were not expended in acquiring right-of-way for the project.

IN WITNESS WHEREOF, each of the parties hereto has caused this instrument to be signed and attested by its proper officers and its official seal to be hereunto affixed the day and year first above written.

TOWNSHIP OF SOUTH BRUNSWICK

ATTEST:

/s/ Kathleen A. Thorpe
Kathleen A. Thorpe, Clerk

ATTEST:

/s/ Jean G. Schwartz
Secretary, Department of
Transportation

APPROVED AS TO FORM:
John J. Degnan, Attorney
General of New Jersey

By /s/ Robert J. Paci
Deputy Attorney General

By /s/ Joseph J. Benedict
Township Attorney

By /s/ Carolyn S. McCallum
Carolyn S. McCallum, Mayor

DEPARTMENT OF TRANSPORTATION

By /s/ Jack Freidenrich
Assistant Commissioner,
Highways

I hereby certify that the foregoing is the form of agreement approved by the South Brunswick Township Committee and referred to in a Resolution adopted November 8, 1978. Witness my hand and seal this 9th day of November 1978.

/s/ Kathleen A. Thorpe
Kathleen A. Thorpe,
Township Clerk

APPENDIX F

[LOGO] TOWNSHIP OF SOUTH BRUNSWICK

Municipal Building Monmouth Junction, N. J. 08852
201 329-4000

December 27, 1982

Thomas E. Hillman, Administrator Analyist II
Cost Sharing Agreement Coordinator
N. J. Dept. of Transportation
1035 Parkway Avenue CN 600
Trenton, NJ 08625

Dear Mr. Hillman:

This office has been forwarded your letter of December 14, 1982 to Jerry Bittner, Township Administrator, requesting that the township provide the N.J. Dept. of Trans. with $274,294, representing the balance amount required towards the condemnation of parcel 98 of the Route 522 realignment project. This office has reviewed the November 16, 1978 agreement between South Brunswick Township and the N.J. Dept. of Transportation, outlining the township's responsibilities towards the condemnation of parcel 98. It was noted that the agreement specified that, prior to the township bearing the cost of the Route 522 right-of-way through parcel 98, the Federal Highway Administration of the U.S. Dept. of Transportation must approve the Route 522 project. To date, the township has not received any notification that the Federal Highway Administration has formally adopted the Environmental Impact Statement and approved the Route 522 realignment. Further, the section of the aforementioned agreement stipulating the N.J. Dept. of Transportation's responsibility relative to Route

522 indicates that, upon receiving Federal Highway Administration approval, "the State shall take all necessary actions to advance the project to construction". The township received a copy of a letter dated May 17, 1982 addressed to the Middlesex County Engineer from Edward G. Baker, Chief, Bureau of Local Aid and Safety Programs, which indicates that the N. J. Dept. of Transportation will not be pursuing the Route 522 project, due to lack of available rural secondary funds. Based upon Mr. Baker's May 17th letter, the State has not taken all necessary actions to advance the project to construction; thus there may be some questions regarding fulfillment of the Department's obligations relative to this agreement.

It is requested that the Department respond to the two points mentioned relative to Federal Highway approval and the Department's responsibility towards Route 522. I will be referring this matter to the Township Attorney, who will be providing the necessary legal input relative to the responsibilities described in the November 16, 1978 agreement.

If there are any additional questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

/s/ David H. Engel
David H. Engel, Director of
Planning and Development

bbc
cc: Township Attorney
Township Administrator
Township Engineer

Township Finance Officer

This is to certify this is a true copy of a letter on file in the Planning Department office, South Brunswick Township, January 7, 1983.

/s/ Kathleen A. Thorpe
Kathleen A. Thorpe
Township Clerk

APPENDIX G

State of New Jersey

Department of Transportation

1035 PARKWAY AVENUE
P.O. BOX 101
TRENTON, NEW JERSEY 08625

LOUIS J. GAMBACCINI
COMMISSIONER

County Route 522

Parcel 98

Barton Investment
Associates

A true copy in South Brunswick files

/s/ Kathleen A. Thorpe
KATHLEEN A. THORPE, TOWNSHIP CLERK

December 18, 1978

Mayor and Council
Township of South Brunswick
Kingston Lane
Monmouth Junction, NJ 08852

ATTENTION: Mayor Caroline McCallum

Dear Mayor McCallum:

The attached notice of acquisition and "cease and desist letter" have this date been mailed to the subject property owner certified and special delivery.

State Department of Transportation personnel acting under statutory authority and on behalf of the municipality via an agreement executed November 16, 1978 will accomplish appraisals and make a full Fair Market Value offer to the owner as promptly as is reasonably possible.

Hopefully, the offer will be found acceptable and the property purchased by agreement. If personal negotiations with the owner do not promptly result in a mutually satisfactory purchase agreement, condemnation will be initiated, including a court deposit and Declaration of Taking which immediately vests title in the State of New Jersey as agent for the municipality on the County Route 522 State Aid Project.

The condemnation which vests title in the State will be in the overall public interest by preventing development in a highway right of way. It will make the Fair Market Value offer available to the owner, meanwhile permitting the Courts to objectively review the matter and to establish the final just compensation amount to be paid.

Sincerely,

/s/ James V. Hyde, Jr.
James V. Hyde Jr.
Director of Right of Way,
Transportation

mtr

Enclosure EQUAL OPPORTUNITY EMPLOYER

cc Township Comm./Clerk
Attorney

APPENDIX H

John J. Degnan
Attorney General of New Jersey
Attorney for Plaintiff
1035 Parkway Avenue
Trenton, New Jersey 08625
(609) 292-5520

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION,
MIDDLESEX COUNTY
Docket No. L-24201-78

STATE OF NEW JERSEY, By the COMMISSIONER OF TRANSPORTATION, Plaintiff, vs. Barton Investment Associates, a corporation of New Jersey; Sentry Savings and Loan Association, a corporation of New Jersey; Daniel Lombardi; Grace Lombardi; State of New Jersey; Township of South Brunswick, in the County of Middlesex, a municipal corporation of New Jersey; Defendants.	CIVIL ACTION COMPLAINT

Plaintiff, State of New Jersey, By the Commissioner of Transportation, having an office at 1035 Parkway Avenue, Trenton, New Jersey says:

1. The office of Commissioner of Transportation was created and now exists pursuant to Chapter 301 of the Laws of 1966, approved December 12, 1966, with all of the functions, powers and duties heretofore vested in the State Highway Commissioner pursuant to N.J.S.A. 27:1-1 et seq., as amended and supplemented.

2. Plaintiff is authorized by Chapter 319 of the Laws of 1927, N.J.S.A. 27:1-1 et seq., as amended and supplemented, to acquire lands or rights therein by gift, devise or purchase, or by condemnation in the manner provided in Chapter 361 of the Laws of 1971 approved December 21, 1971, as amended and supplemented, and is authorized by Chapter 83 of the Laws of 1945, N.J.S.A. 27:7A-1 et seq., as amended and supplemented, to acquire, either by purchase or condemnation, property rights, easements and access rights.

3. Plaintiff has determined to acquire for public use for Department of Transportation purposes a fee simple in the land and premises hereinafter described pursuant to Chapter 112 of the Laws of 1951, N.J.S.A. 27:7-22.2, as amended and supplemented.

4. Plaintiff has been unable to acquire said land and premises through bona fide negotiations with the owner.

5. The land and premises sought to be condemned are more particularly described in an exhibit attached hereto, made a part hereof, and marked "Exhibit A", wherein reference is made to a map marked "Exhibit B", a copy of which is also attached hereto and made a part hereof, and upon which map the said land and premises are designated.

6. The owner of record of the said land and premises is Barton Investment Associates, a corporation of New Jersey, address, Agent, Bill John–Gambocz, 502 Amboy Avenue, Perth Amboy, New Jersey; other persons and corporations appearing of record to have an interest in the said land and premises, and persons and corporations who have or may claim to have an interest therein as are known to the plaintiff are Sentry Savings and Loan Association, a corporation of New Jersey, address, 266 Bloomfield Avenue, Caldwell, New Jersey, which, by reason of a mortgage made to it by Barton Investment Associates, a corporation of New Jersey, dated August 23, 1978, and recorded in the Office of the County Clerk of Middlesex County August 25, 1978, in Book 2561 of Mortgages, at page 281, the said Sentry Savings and Loan Association, a corporation of New Jersey, has or may claim to have an interest therein; Daniel Lombardi and Grace Lombardi, his wife, address of both, 234 Plainfield Road, Edison, New Jersey, who, by reason of a mortgage made to them by Barton Investment Associates, a corporation of New Jersey, dated August 23, 1978, and recorded in the Office of the County Clerk of Middlesex County September 1, 1978, in Book 2562 of Mortgages, at page 776, the said Daniel Lombardi and Grace Lombardi, his wife, have or may claim to have an interest therein; State of New Jersey, address, Attorney General's Office, State House Annex, Trenton, New Jersey, which, by reason of corporation franchise taxes due and unpaid to it by Barton Investment Associates, a corporation of New Jersey, has or may claim to have an interest therein; Township of South Brunswick, in the County of Middlesex, a municipal corporation of New Jersey, address, care of

Clerk, Katherine A. Thorpe, Municipal Building, Ridge Road, Monmouth Junction, South Brunswick, New Jersey, 08852, which, by reason of certain taxes and assessments, duly levied and assessed, and by further reason of farmland roll-back taxes assessed or to be assessed, has or may claim to have an interest therein.

7. The amount of compensation offered by the plaintiff to the defendant owner is $48,800.00, which amount was calculated in the manner set forth in Exhibit "C" attached hereto and made a part hereof.

Plaintiff demands judgment against the defendants that it is duly vested with and has duly exercised its authority to acquire the property being condemned and for an Order Appointing Commissioners to fix the compensation required to be paid, in accordance with Chapter 361 of the Laws of 1971, approved December 21, 1971, as amended and supplemented.

John J. Degnan
Attorney General of New Jersey
Attorney For Plaintiff

Dated: January 23, 1979

BY: /s/ Robert J. Paci
Robert J. Paci
Deputy Attorney General

Certified a True Copy
of the Original
John J. Degnan
Attorney General of New Jersey

EXHIBIT A

G-1963
SK:js 1/9/79

All that certain land and premises, situate, lying and being in the Township of South Brunswick, in the County of Middlesex and State of New Jersey and particularly described as follows:

Parcel 98, as indicated on a map entitled: "New Jersey Department Of Transportation, GENERAL PROPERTY PARCEL MAP, RELOCATED COUNTY ROUTE 522, Township Of South Brunswick, County Of Middlesex, Scale: As Indicated, December 1978"; and as shown more particularly on a map attached hereto, made a part hereof, marked "Exhibit B", entitled: "NEW JERSEY DEPARTMENT OF TRANSPORTATION, RELOCATED COUNTY ROUTE 522, PARCEL 98, TOWNSHIP OF SOUTH BRUNSWICK, COUNTY OF MIDDLESEX, SCALE: 1"=80', JANUARY 8, 1979";

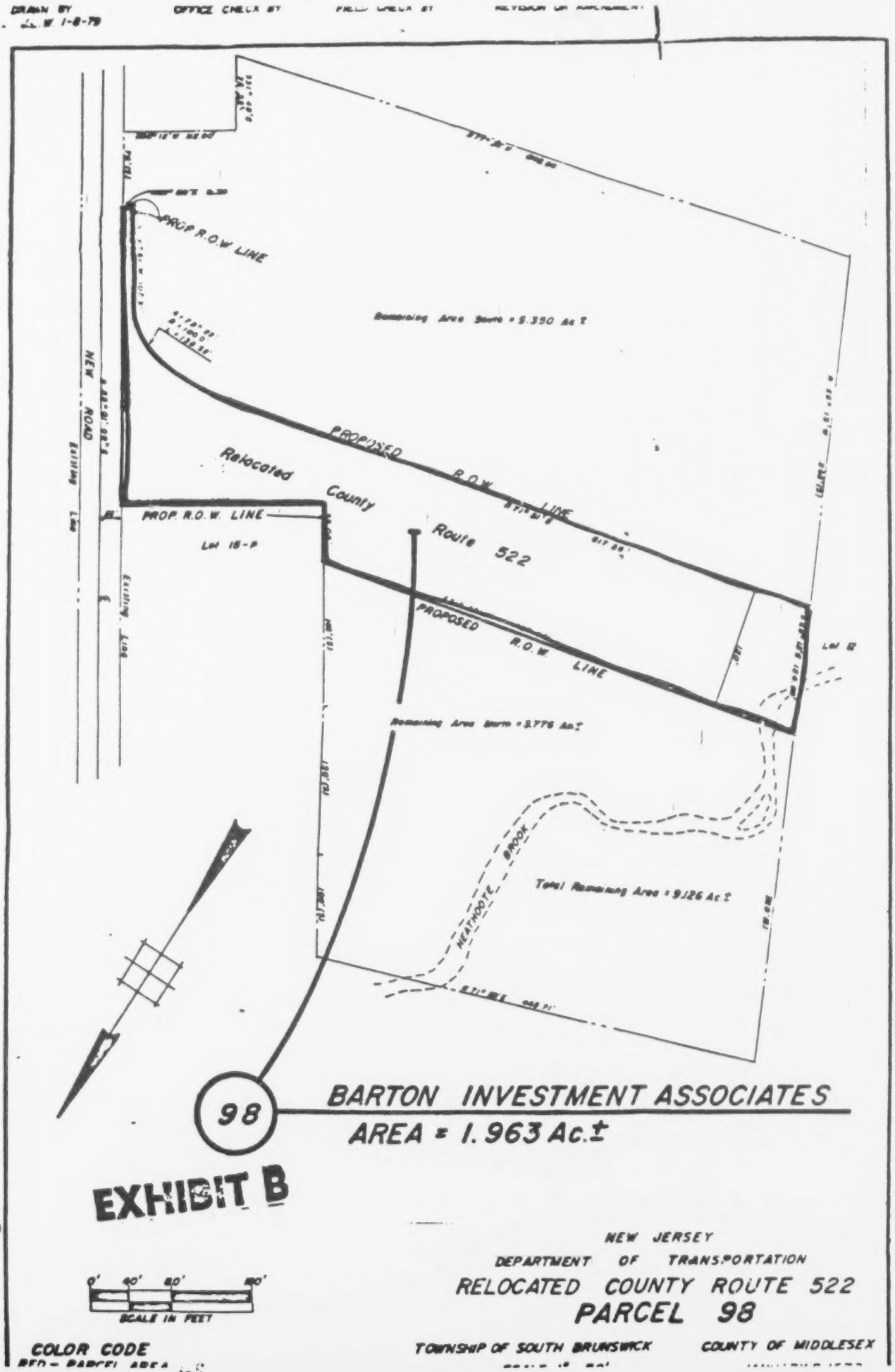
Parcel 98, including specifically all the land and premises more particularly described as follows: bounded on the northeast by the southwesterly line of New Road; on the southeast, southwest, and south by the proposed right of way line of Relocated County Route 522, as laid down on the aforesaid maps; on the southwest by lands now or formerly of Lot 12 in Block 84; on the north by the proposed right of way line of Relocated County Route 522, as laid down on the aforesaid maps; and on the northeast and northwest by lands now or formerly of Lot 15-P in Block 84; all as shown on the aforesaid maps; containing 1.963 acres more or less;

TOGETHER WITH all right, title and interest that the owner may have in and to New Road contiguous to the above described premises as shown on the aforesaid maps;

Being also known as part of Lot 15Q in Block 84 on the tax map of the Township of South Brunswick;

SUBJECT TO all public utility easements recorded or unrecorded affecting the herein described premises;

The above described premises are color-coded on "Exhibit B" in the following manner: Red – Parcel Area.



BEST AVAILABLE COPY

APPENDIX I

COUNTY COUNSEL OF MIDDLESEX, NEW JERSEY
Plaza One
393 George Street-3rd Floor
New Brunswick, New Jersey
03901
(201) 745-3228

(Seal)
COUNTY OF MIDDLESEX, NEW JERSEY
Office of County Counsel

June 9, 1981

Francis C. Foley, Esquire
Assistant County Counsel
1430 Oak Tree Road
Iselin, New Jersey 08830

RE: GAMBOCZ vs. NEW JERSEY DEPARTMENT OF TRANSPORTATION, et al

Dear Frank:

I am writing pursuant to the Motion which is Returnable on June 15th in regard to the above-captioned matter.

I have discussed this matter with the Board of Chosen Freeholders and the County Engineer. Pursuant to these discussions, the Board wishes that a statement containing the following items be put on the official record of the Court proceedings:

1. The County does not have a contract with South Brunswick to realign or reconstruct Route 522 other than the contract that was entered into in 1970.

2. The County has no plan to realign or reconstruct Route 522 at this time without substantial federal and/or State assistance, which has not, to date, been committed.

3. The County never received notice that the State was going to take over jurisdiction of Route 522, and there is no such contract for any State takeover of this roadway.

4. Route 522 is currently under the jurisdiction of the County of Middlesex.

5. The only contract between the County and the Federal Highway Administration is a 1978 contract for an environmental impact study concerning Route 522.

Since the items as set forth above are mere statements of fact, I see no problem with putting these items on record.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Yours very truly,

/s/ John A Hoagland
JOHN A HOAGLAND
County Counsel

EMA:fl

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APPENDIX J

Ex A

LOCAL Home News Publishing Co.

Gambocz can start criminal action but no civil suits in Rt. 522 battle

JOE CANTLUPE
ne News Trenton Bureau

TRENTON — For the "sake of my ow judges," a federal judge this ordered Perth Amboy developer Gambocz never to file another suit to block South Brunswick's posed Route 522 highway project.

But U.S. District Judge Harold Ackman yesterday refused to interfere h criminal charges Gambocz filed sday against a former former ownship mayor, two municipal attorrs and state officials in connection h what Gambocz contends was the gal condemnation of his property.

Gambocz charged "criminal fraud" Must former Mayor Carolyn McCalm, attorneys Joseph J. Benedict and phen Orban; and two state officials, puty Attorney General Robert J. ci and Transportation Department rial James V. Hyde.

Attorneys for South Brunswick and state failed in their attempt yester- to have the federal court cite Gam- in contempt of court for filing the minal charges or throw out the deloper's allegations.

Ackerman said his decision on Monday to halt Gambocz' civil complaints about Route 522 has no effect on criminal charges.

"It was not my intention to put an injunctive umbrella" over criminal complaints, Ackerman said. "It was not my intention to stop him from what he did yesterday (Tuesday)."

On Monday, Ackerman summarily dismissed Gambocz' most recent civil complaints against township, county and state officials concerning the Route 522 project.

The judge noted that Gambocz had filed five unsuccessful civil lawsuits over the past few years in an effort to set aside condemnation of his property off New Road in South Brunswick. Gambocz contends that plans for the highway are invalid and the loss of his property has cost him hundreds of thousands of dollars. Ackerman said the lawsuits should be stopped "... not only for (the) litigants and for the sake of my fellow judges... There is a time for all things to come to an end."

But Ackerman's decision yesterday assures a continuation of the battle of Route 522.

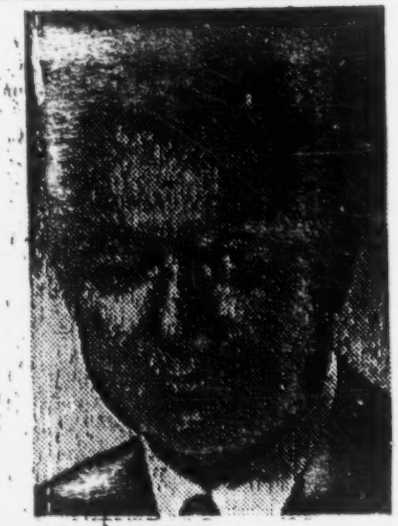
Gambocz told the judge yesterday he has "evidential facts and proof" to support his claims that the land was illegally condemned for the proposed highway.

The developer has said that a contract between the township and county, enacted in 1970, is not valid because the requirements of the agreement were never met.

Gambocz said he wants a "grand jury to make a determination" about the criminal charges, although the township and state attorneys contended in legal papers that the developer's allegations constitute a sham and are merely rehashed charges.

Township Attorney Edward Picone, who expressed his confidence that the criminal charges would be dismissed, said in an affidavit that the court was "relitigating the validity of the condemnation action through the sham of criminal charges."

Gambocz had filed similar criminal charges against Mrs. McCallum and two other South Brunswick township committeemen in 1978, but they were dismissed administratively by Prosecutor Richard Rebeck. Gambocz contend-



BILL GAMBOCZ
... lose one, win one

ed that Rebeck was "biased ... (and) political."

"He doesn't deal with frivolity," Picone said later, referring to the prosecutor. Picone indicated he was upset that repeated newspaper accounts of Gambocz' actions lent "credibility" to the allegations.

The township stands to gain $3,000 in legal fees as a result of the Gambocz action, according to Picone.

Meanwhile, a municipal court judge is to set probable-cause hearings on the Gambocz charges against the township and state officials.

Assembl agree to

All four Democratic primar dates for two state Assembl from the 17th District y agreed to meet in a debate l month.

The debate will be broadca dio station WCTC.

Although Ted Light issued lenge to his three opponents in release issued Tuesday, Asse David Schwartz and his runnin Angela Perun, said yesterday were unaware of Light's chall

"I have already accepted a tion to debate by WCTC pri challenge from Ted Light," said. "My willingness to discu bate the issues has been longst

Schwartz and Mrs. Perun, field councilwoman, have rec backing of the Democratic tions in Middlesex and Union and will appear on the regul line. Light, the Piscataway president and the township from 1971 to 1980, and Scott it, a Plainfield lawyer, ar challenges in the June 2 prima

Salit said he agreed to the d cause "all of the candidates owe it to the people."

Light sought to fill a vacan

Piscataway

Home News Trenton Bureau

TRENTON — The New nomic Development Author proved an $850,000 economi ment loan to D.D. Willian Inc. of Circle Drive North way, enabling it to e Northeastern caramel fa operation. The project is create 11 new jobs

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